

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Petition of AT&T Services, Inc., for)	
Forbearance Under 47 U.S.C. §160(c))	
from Enforcement of Certain Rules for)	WC Docket No. 16-363
Switched Access Services and Toll Free)	
Database Dip Charges)	

COMMENT OF SOUTH DAKOTA NETWORK, LLC

South Dakota Network, LLC (SDN), by its attorneys, hereby comments on the Petition for Forbearance (Petition) filed by AT&T Services, Inc. (AT&T) in the above captioned proceeding, in which AT&T asks the Commission to forbear from its tariffing rules "for transport and tandem charges for calls to and from access stimulating LECs...".¹ AT&T's Petition does not meet the standard for forbearance and the forbearance requested is not necessary to address the problem discussed. Accordingly, AT&T's Petition should be denied.

I. Introduction

In its Petition, AT&T asks the Commission to "forbear from the tariffing of access charges for tandem switching and tandem-switched transport for all LECs, including intermediate LECs, on all calls to or from LECs engaged in access stimulation."² SDN is a Centralized Equal Access (CEA) provider in the state of South Dakota and an intermediate

¹ Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. §160(c), WC Docket No. 16-363, Sept. 30, 2016 (AT&T Petition or Petition).

² AT&T Petition at 3.

provider that would be adversely impacted by AT&T's request.³ As a CEA provider, SDN's switched access services are typically provided pursuant to federal and state tariffs. SDN was authorized by the Commission and the state commission to bring the benefits of equal access and competition to rural America. At the advent of equal access, this functionality could not be deployed by rural LECs in a cost effective manner because LEC switching facilities varied significantly as to vendor, features and capability; rural LECs faced restraints on capital; and interexchange carriers (IXCs) were unwilling to make their competitive long distance services available and interconnect with rural LECs that served few customers with relatively low traffic volumes. Even today, the potential traffic demand in the rural areas of South Dakota, where the average number of lines per end office is one-eighth that of the large price cap carriers or less, makes it difficult to economically support the provisioning of all services and to attract the service offerings of IXCs and Internet Protocol (IP) based providers.

To overcome these problems, SDN was authorized to aggregate the rural traffic, centralize the equal access function, and provide interconnection equal in type and quality to all IXCs. SDN's CEA network provided, and still provides, efficient and cost effective equal access to the rural communities in South Dakota by providing a uniformly priced network that creates a bridge between the IXC's network and all of the exchanges of the rural LECs. Through the SDN network, IXCs are able to indirectly connect to all of the rural LECs' local network facilities through points of interconnection ("POI") established with the SDN CEA network. Because SDN aggregates long distance traffic for many rural telephone lines, IXCs have the choice of reaching thousands of customers in hundreds of rural communities through a single CEA connection. This concentration of traffic, made possible by CEA, has

³ AT&T's Petition states that it would apply to CEA providers.

succeeded in providing consumers in rural LEC service areas with an attractive choice of several IXC's and has increased the availability of various competitive service offerings. In addition to long distance, SDN has been instrumental in enabling cost-effective rural competition in other areas of the communications industry, as wireless carriers, CLECs and Internet broadband providers have interconnected at the CEA tandem to derive the benefits of rural traffic concentration.

In granting SDN authority to operate, the Commission and the state commission found that the benefits of rural access traffic concentration, for both originating and terminating traffic, which made rural areas more attractive markets from an IXC perspective, was in the public interest.⁴ The authority granted by the Commission and state commission continues to govern the relationship between SDN and the IXC's that use SDN's services. Further, the level of IXC traffic to and from most of the ILECs and CLECs that are listed in SDN's tariff as Routing Exchange Carriers remains at low volumes. The current tariff provisions and rates in these circumstances continue to provide an efficient option for IXC's.

II. AT&T Has Not Met The Standard For Forbearance With Respect To SDN's Tariffed Service

If AT&T's Petition is granted, SDN would not be able to charge a tariffed switched access rate to IXC's when the IXC's' traffic is ultimately routed to a LEC engaged in access stimulation. AT&T argues that forbearance is warranted for three reasons. First, "tariffing of transport and tandem charges on calls to or from access stimulating LEC's is not necessary to

⁴ *Memorandum Opinion, Order and Certificate (SDCEA, Inc.)*, 5 FCC Rcd. 6978 (Common Carrier Bureau (1990)) ¶24 (finding benefits of centralized equal access services in rural areas of South Dakota justified public interest finding).

ensure that access rates (or any other rates) are 'just and reasonable.'"⁵ In support of this argument, AT&T states that "[a]lthough the Commission has reduced the terminating end office rates that access stimulating LECs could lawfully tariff, these LECs responded by increasing both their traffic volumes and their transport charges (or shifted toward originating access schemes)." ⁶ As a result, AT&T argues "LECs engaged in access stimulation continue to reap 'inflated' overall profits through access charges that remain unreasonable."⁷

Second, "tariffing of transport and tandem charges on calls to or from access stimulating LECs is not necessary 'for the protection of consumers.'"⁸ In support of this argument, AT&T states that even after the Commission's reforms, consumers are still subsidizing users of access stimulation services in the form of "transport access charges."

Third, "forbearance from the tariffing of transport and tandem charges on calls to or from access stimulating LECs is 'consistent with the public interest.'"⁹ According to AT&T, forbearance is in the public interest because access stimulation is a "wasteful arbitrage practice" and it gives access stimulating LECs a "competitive advantage over companies that charge their customers for the service."¹⁰ AT&T further argues that the Commission declined to detariff CLEC access charges related to access stimulation in 2011 because it expected its access stimulation and intercarrier compensation reforms to reduce the effects of access stimulation, which has not occurred. According to AT&T, "because the Commission has not yet put in place a plan for a complete transition to bill-and-keep for transport rate

⁵ AT&T Petition at 16.

⁶ AT&T Petition at 16.

⁷ AT&T Petition at 16.

⁸ AT&T Petition at 16.

⁹ AT&T Petition at 17.

¹⁰ AT&T Petition at 17, citing *USF/ICC Transformation Order*, ¶¶ 33.

elements, there remains a substantial opportunity for LECs to engage in access stimulation by billing excessive mileage charges."¹¹

As an initial matter, none of these arguments apply to SDN, including AT&T's argument that forbearance is in the public interest because access stimulation gives LECs a competitive advantage, because SDN is not engaged in the business of access stimulation. SDN also has not taken any action "to increase traffic volumes" as a result of access stimulation. SDN also does not assess "unreasonable" or "excessive" transport charges and, in fact, does not assess any tariffed transport charges for traffic to any access stimulator. Thus, AT&T has made no showing that would support forbearance with respect to SDN.

Furthermore, AT&T's request is not in the public interest. The forbearance requested by AT&T will expose SDN to rendering service for free. If AT&T's request is granted, LECs engaged in access stimulation still will be able to dictate the routing of traffic through the SDN tandem, however, SDN will not be able to charge its tariffed rate for the service provided. Rather, it will have to anticipate when to expect such traffic and negotiate an agreement with all IXCs that may be involved, if it can, in advance. Since SDN will not be able to control the actions of the LEC or the IXCs or when or if alleged access stimulation traffic is involved, SDN will be "left holding the bag." AT&T's forbearance request, thus, will simply shift the harm caused by access stimulation from AT&T and its customers to SDN and SDN's customers.

In addition, it is in the public interest to maintain a tariff option for this traffic. Not only is the tariff mechanism an efficient and effective way for SDN to assess charges for services provided, some IXCs, such as those that do not exchange large volumes of stimulated traffic with SDN, also may prefer it as a way to avoid the costly and burdensome

¹¹ AT&T Petition at 18.

process of negotiating an individual contract. While AT&T suggests that it exchanges large volumes of stimulated traffic with some LECs engaged in access stimulation, there is no indication that this holds true for all IXC. To the extent some IXCs do not exchange large volumes of stimulated traffic, a tariff option may be the most cost effective choice for their smaller volumes of stimulated traffic.

As shown herein, none of AT&T's statements in support of a grant of forbearance apply to SDN. Accordingly, AT&T has not met the standard for forbearance with respect to SDN and its request for forbearance from the tariffing of access charges for tandem switching provided by SDN must be denied.

III. There Are More Targeted Solutions To The Problem Identified

AT&T argues that because of certain practices engaged in by access stimulators, the laws of tariffing require AT&T to pay charges they deem excessive. Thus, rather than the forbearance requested by AT&T, the Commission should consider actions that are tailored to address the alleged harmful actions of LECs engaged in access stimulation.

For example, AT&T's Petition asserts that CLECs engaged in access stimulation are able to obtain "excess" revenue because they refuse to directly interconnect with IXCs. Instead, it argues that CLECs can route traffic through a tandem to increase mileage charges and that CLECs can bill a capped rate and not a cost-based rate.

With respect to SDN's CEA authority, the Commission and state commission require IXCs to route traffic to the SDN member ILECs through the SDN tandem. Currently, there are no SDN ILEC members that engage in access stimulation. However, non-member CLECs engaged in access stimulation also have routed traffic through the SDN tandem. To ensure that CLECs are not able to engage in arbitrage and thwart the intent of the

Commission's access stimulation order, the Commission could make clear that CLECs engaged in access stimulation cannot refuse to interconnect with IXCs at points distant from the centralized equal access tandem when IXCs make such a request. In addition, rather than mandatory detariffing, the Commission should reaffirm that intermediate carriers can provide service pursuant to contract in the case of access stimulation. This would allow IXCs with little traffic to an access stimulator to continue to use the tariffed rate, while IXCs with large volumes of traffic to an access stimulator would be able to negotiate a more reasonable rate. It also would protect SDN and its customers if an IXC does not negotiate a different rate in connection with stimulated traffic. At bottom, however, targeted, narrow solutions should be used to address AT&T's concerns, rather than gutting SDN's existing tariff mechanisms.

IV. Conclusion

AT&T's arguments in its Petition are not sufficient to support its general request for forbearance from the tariffing of access charges for tandem switching and tandem-switched transport for all LECs, including intermediate LECs, on all calls to or from LECs engaged in access stimulation and none of its arguments apply to SDN, in particular. In addition, rather than the forbearance requested by AT&T, there are actions that the Commission can take to

directly address the alleged harmful actions of LECs engaged in access stimulation.

Accordingly, AT&T's request for forbearance must be denied.

Respectfully submitted,

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